THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 4th day of October,2007

W.P.Nos.22424, 22425, 22427, 22467, 22472, 22473 & 22846 of 2003

W.P.No.22424 of 2003

Between:-

Gandham Venkateswarlu & others … Petitioners

and

The Director, National Institute of Technology (Regional Engineering College), Warangal and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.22424, 22425, 22427, 22467, 22472, 22473 & 22846 of 2003

COMMON ORDER:

In all these Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

Petitioners are working in various capacities with the respondent-National Institute of Technology (Regional Engineering College), Warangal on daily wage/NMR/consolidated basis. It is their case that they have made several representations through their Association to the respondent-Institute seeking regularization of their services in the posts in which they are working. Though the respondents have been promising that their services will be regularized, nothing has been done so far. According to the petitioners, there are clear vacancies and there is need and necessity of continuing them in their respective posts. They have been working continuously, without any break, for the last 2 to 15 years. The work they have been attending to is perennial in nature. There was no need or necessity to discontinue their services. The respondent-Institute, taking advantage of market condition and absence of their bargaining power, is continuing them on consolidated basis, even though they had put in long service. Even the provisions of the labour legislations like the Minimum Wages Act were not implemented. Respondent-

Institute being a model employer ought to have regularized their services in the vacancies available. Respondents cannot keep them in total insecurity, even though they have been working for the last more than 2 to 15 years. In fact, respondents have regularized the services of some of the persons, who are similarly situated as that of the petitioners. However, their cases were not considered. Therefore, the action of the respondents is violative of Articles 14,16 and 21 of the Constitution of India and adversely affecting their lives. Hence, these Writ Petitions.

A detailed counter affidavit has been filed by respondents 1 to 3 in Writ Petition No.22424 of 2003 denying the allegations made by the petitioners. It is stated that Regional Engineering Colleges were established at 17 different States in the country and each one was registered under the provisions of the Societies Registration Act. However, in the year 2002, Ministry of Human Resources Development, Government of India has decided to take over the administrative control of all the Regional Engineering Colleges, elevating them to the status of National Institutes of Technology. It was intended to secure uniform standards of training and research and also improve upon its quality further so as to ultimately bring them on par with the reputed Indian Institutes of Technology over a period of time. From the academic year 2003-04, the admission process to the respondent-Institute has undergone a sea change. Further, due to various reasons, several posts, both on teaching as well as non-teaching side, could not be filled in on regular basis. After the National Institutes of Technology have been constituted all over the country, the Ministry of Human Resource Development, Government of India, has not finalized the modalities of recruitment to both teaching and non-teaching cadres. In the meeting of the Directors of National Institutes

of Technology held at New Delhi on 27-7-2002, it was decided not to create any posts – teaching as well as non-teaching – and no recruitment should be resorted to. In the meantime, Expenditure Reforms Commission (ERC) had gone into the exercise of optimum utilization of the available manpower strength. One of the important suggestions made by the ERC is that the ratio between teaching and non-teaching staff in an institute should be 1:1.5, but, under no circumstances, the ratio should be permitted to cross a maximum of 1:2. Thus, continuous efforts are required to be made for manpower deployment and effective utilization of their services so as to ultimately achieve the desired ratio between teaching and non-teaching staff. The teaching staff strength of the 1st respondent-Institute being 202, the permissible strength of non-teaching staff should be around 303. As on the date of filing counter, the strength of regular non-teaching staff in the Institute is 308. In view of the recommendations made by the ERC, there is very little scope left in the matter of soliciting any relaxation in the matter of either recruitment or regularization of the temporary non-teaching staff working in the Institute. The Ministry of Human Resources Development also specifically directed that the salary bill for the non-teaching staff should be frozen at the level of the financial commitment in that regard met during the financial year 2000-2001. It is also stated that the Institute has a main guest house, which has 8 suits. Another 60 room guest house was constructed during the year 1997-98. With the Institute expanding its academic activities by way of introducing new post-graduate programmes and increasing the intake of under-graduate programmes, the flow of dignitaries and experts to the Institute started increasing and as such, the occupancy rate of the guesthouse has been found to be steadily increasing. One high power committee visited the Institute in the year 2000 for

assessing the strength of the Institute and for conferment of deemed University status to it. Similarly, another important committee visited the Institute in the year 2001 for sanctioning seats under Quality Improvement Programme (QIP) for M.Tech and Ph.D. programmes. In order to cope up with the increased visitors and to provide better service, as many as 5 persons have been engaged on temporary basis during 1999-2000, though the House Keeping Department of the Institute does not have any vacancies in its sanctioned cadre strength. Petitioners have been specifically engaged as Room Boys of the guesthouse etc. Since the guesthouse has been fully established and working procedures have fallen, such a contingent of manpower of 5 persons may not be required any longer. Therefore, the optimum manpower requirement for the effective maintenance and upkeeping of the guesthouse is bound to be evaluated and on that basis only, the manpower deployment has to take place. It is further stated that the Regional Engineering College Cooperative Stores Limited, Warangal was established in the year 1964 with an object to provide books, stationery, record books, drawing sheets and other general articles required by the student community. All the students, on enrolment in the Institute, automatically become members of the Stores. The affairs of the Stores is governed by Board of Directors, consisting of the Director of Institute (Ex-Officio President), Secretary (a faculty member nominated by the Director, Dean, Student Affairs (Member), Chief Warden (Member), Former Secretary of the Cooperative Stores (if in service) (Member) and Student representatives (one from each year of U.G. Programme, one from PG Programme and one from girl students). The salaries of the petitioners are met from the profits earned by the Cooperative Stores and the Institute does not provide any budgetary assistance for running the Stores. Since the salaries of

the employees are met from the profits of the Stores, there cannot be regular posts for the Stores. However, some persons, who worked earlier as Sales Boys etc., were absorbed into the regular College service as Junior Assistant etc., as per G.O.Ms.No.212, dated 22-4-1994.

Learned counsel for the petitioners, however, placed before the Court certain material to show that there are 100 sanctioned posts available and the petitioners are entitled to be appointed in those posts. In this regard, respondents 1 to 3 have filed an additional counter stating that the Government of India is enforcing the recommendations of the Expenditure Reforms Committee and directed all National Institutes of Technology to follow 1:1.5 ratio for teaching and non-teaching staff. The Institute is already having staff in more than 1:1.5 ratio, which is prescribed by ERC and hence, the Institute cannot take any initiation to fill up any post until the Ministry of Human Resource Development gives permission to do so. The contents of the letter dated 15-12-2003, which is confidential and to which petitioners have gained stealthy access, are no longer relevant. The said letter is in the nature of inter-departmental correspondence and no relevance can be placed on it. Further, the Ministry of Human Resources and Development, Government of India has imposed a ban on general recruitment. However, Government of India has given permission to fill only SC/ST backlog posts and accordingly only SC/ST posts have been filled up. In the REC system, the recruitment and pay structure of non-teaching staff was as per State Government Rules. Hence, some of the temporary staff were absorbed during the REC system by the State Government. On becoming NIT, the financial and administrative powers are taken over by the Ministry of Human Resource Development, Government of India. After taking over by the

Government of India, the Institute is following directives of Ministry of Human Resource Development. Though it is the contention of the petitioners that NIT, Tirchi has absorbed the temporary staff by its Director, but the action taken by the Director, was not approved by the Board of Governors and the whole issue at NIT, Tirchi is still unresolved. The Ministry of Human Resources Development generally authorizes the Institutes to respond or to file counters in all legal cases, for that they give directions as and when required.

Heard both sides.

From the above averments and from the arguments advanced by the learned counsel on either side, one thing is clear that the petitioners are being continued in various capacities in the NIT, Warangal, and they have put in a service between 2 and 15 years. The stand taken by the respondents that some of them are attached to a cooperative society run and maintained by the students and the Director was only an Ex-Officio President of the Society and their salaries are being met from the profits of the Cooperative Society and, therefore, petitioners are not entitled for regularization of their services is untenable. This is no more *res integra.* It has already been held by the Apex Court that once the hostels or canteens/cafeteria or guest houses are being maintained by the employer, it must be deemed that there are regular vacancies and they are being maintained by the employer (*for one such cases - See* ***G.B.PANT UNIVERSITY OF AGRICULTURE AND TECHNOLOGY v. STATE OF U.P.*** *paras 10 to 12)*.

Now the question is as to whether there are any sanctioned vacancies available or not. When the petitioners brought to the notice of this Court, the Circular dated 3-3-1993 showing as to the existence of number of vacancies, the respondents have simply stated that it is

an internal correspondence between the Ministry and other officials and the petitioners have gained stealthy access to such letter and as such, they are liable for some action. But, it is not explained as to the confidentiality of such letters, when it indicates that there are more than 100 vacancies to be filled up by NIT, Warangal. They simply stated that out of the requirement of 303 persons, already 308 are filled up. In the peculiar facts and circumstances of this case, I am of the opinion that the petitioners are entitled for seeking regularization of their services in the sanctioned posts, since, they have completed more than 10 years of service and the nature of appointment of the petitioner is not in doubt and no back door appointment is attributed to them nor it is the case of the respondents that the petitioners are not entitled for being absorbed into the posts in which they are working.

In the above circumstances, the respondents are directed to consider regularization of the services of the petitioners, if sanctioned posts are available and, if necessary, by seeking permission from the Ministry of Human Resource Development, Government of India, in this regard and pass appropriate orders within a period of six months from the date of receipt of a copy of this Order. Till such time, the services of the petitioners shall not be disturbed.

With the above directions, the Writ Petitions are disposed of. No order as to costs.

04-10-2007

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